




GSA Federal Acquisition Service

May 11, 2012

FAS INSTRUCTIONAL LETTER 2012-09**MEMORANDUM FOR ALL FAS ACQUISITION ACTIVITIES**

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SUBJECT: Sustainability in Acquisition

1. **Purpose:** The purpose of this Instructional Letter (IL) is –
 - to provide general guidance regarding the implementation of sustainable acquisition requirements
 - to provide clarification regarding the applicability of an [interim rule](#) amending the Federal Acquisition Regulation (FAR) to implement [Executive Order 13514 \(E.O. 13514\) Federal Leadership in Environmental, Energy, and Economic Performance](#) and [Executive Order 13423 \(E.O. 13423\) Strengthening Federal Environmental, Energy, and Transportation Management](#)
2. **Background:** For more than 25 years, statutes and executive orders have required Federal agencies to purchase products having certain environmental attributes. The most recent applicable executive orders are E.O. 13423 and E.O. 13514.

Statutory and executive order requirements to purchase specific products with energy or environmental attributes address the following:

- Recycled content products (Environmental Protection Agency (EPA)-designated products);
- Energy-efficient products (Energy Star, Federal Energy Management Program (FEMP)-designated, low standby power);
- Water-efficient products (WaterSense or other water conserving products);
- Alternative fuel vehicles/alternative fuels;
- Biobased content products (U.S. Department of Agriculture (USDA)-designated products);
- Electronic Product Environmental Assessment Tool (EPEAT)-registered products and other environmentally preferable products and services;

- Products containing no or alternatives to ozone depleting substances (EPA Significant New Alternatives Policy or SNAP); and
- Non-toxic or less toxic alternatives.

Federal agencies are also required to design, construct, maintain, and operate high-performance sustainable buildings in sustainable locations.

To implement these executive orders and statutory requirements, GSA issued a [Green Purchasing Plan \(GPP\)](#) (GSA Order OBP 2851.2), which outlines GSA's green purchasing policy and includes related agency-wide guidance. As required by the GPP, FAS subsequently released the [FAS Green Purchasing Implementation Plan](#), which describes the actions FAS will take to ensure compliance with the GPP, including the parties responsible for each action.

3. Effective Date: Date of signature.
4. Termination Date: This IL remains in effect until it is cancelled or incorporated into a handbook.
5. Applicability: This IL applies to all GSA/FAS acquisition activities. This IL also applies to Department of Veterans Affairs (VA) acquisition activities awarding and administering Federal Supply Schedule (FSS) contracts.
6. Reference Regulations: FAR Parts 2, 4, 5, 7, 11, 12, 13, 23, 36, 37, 39, and 52.
7. Instructions/Procedures:

A. Applicability to Contract Actions

Section 1.1 of the GSA GPP establishes the agency's green purchasing policy. It states that, effective immediately, all applicable GSA contract actions shall require the supply or use of:

- EPA Comprehensive Procurement Guideline (CPG)-designated products
- ENERGY STAR® or FEMP-designated products
- EPEAT-registered products
- USDA-designated BioPreferred/Biobased products
- EPA WaterSense or other water efficient products
- Non-ozone-depleting products or alternatives listed under the EPA SNAP (Significant New Alternatives Policy)
- Products containing non or less toxic chemicals or containing alternatives to those on EPA's Priority Chemicals list
- Alternative fuel vehicles and alternate fuels
- Environmentally Preferable products or services
- Products otherwise determined to be environmentally sustainable

This policy applies to all new contract actions in support of GSA operations and using GSA funds, to include FSS contracts. Note that not every contract action will require the supply or use of any of these products. Additionally, buyers may consider many other environmental programs under the environmentally preferable category, such as EPA's SmartWay program.

The FAS Green Purchasing Implementation Plan provides the following guidance for determining which contract actions are subject to this policy.

- i. Products: FAS purchases of any type of product listed in the [GSA Green Products Compilation](#), including purchase card transactions, are considered to be subject to GSA's green purchasing policy. The products listed are those for which the EPA, DOE, or USDA have issued designations or otherwise provided guidance for product environmental or energy attributes. Note that it is not the intent of the compilation tool to list all environmentally sustainable products in the marketplace and that the green purchasing requirements apply only to the designated products.
- ii. Services: Because products are supplied or used as part of services contracts, the GSA GPP also applies to the purchase of services. The Office of Management and Budget identified applicable services contract types as ones under which designated green products typically could be supplied or used. At a minimum, FAS purchases of any of the following services are considered to be subject to GSA's GPP:
 - Building construction, renovation, or repair;
 - Building operations and maintenance;
 - Landscaping services;
 - Pest management;
 - Electronic equipment, including leasing and maintenance;
 - Fleet maintenance;
 - Janitorial or custodial services;
 - Laundry services;
 - Cafeteria operations;
 - Meetings and conference services; and
 - Transportation, travel, and automotive services.

To be compliant with the GSA GPP, FAS contracts for these services must require the use of green products when any of the products listed in the Green Products Compilation are part of the contract's scope of work.

For other services contracts, the use of recycled content paper should be considered. The preference is for all deliverables and administrative documents to be submitted electronically. However, should the acquisition team determine paper documents are necessary, then the contract must require that paper

deliverables and administrative documents be printed and copied two-sided on paper containing at least 30% postconsumer fiber (see also FAR 4.302). While this requirement applies to contracts that exceed the simplified acquisition threshold, the use of clause 52.204-4 *Printed or Copied Doubled-Sided on Postconsumer Fiber Content Paper* (May 2011) should be considered for all contracts in order to meet the E.O. 13423 and 13514 requirements to purchase 30% postconsumer content paper.

B. Acquisition Planning and Documentation of Exceptions

- i. Acquisition Planning: FAR 7.103 requires that the agency head or a designee prescribe procedures for meeting various sustainable acquisition requirements.

GSA's GPP requires that agency acquisition plans and solicitations shall, as applicable:

- To the maximum extent practicable, consider requiring electronic deliverables, eliminating the need for paper
- If paper deliverables must be required, specify needs for printing and writing paper containing 30% postconsumer fiber
- Require the procurement of the products and services identified in GSA's GPP and the Green Products Compilation
- Comply with the Guiding Principles for Federal Leadership in High Performance and Sustainable Buildings (Guiding Principles), for the design, construction, renovation, repair, or deconstruction of Federal buildings
- Require contractor compliance with federally mandated environmental requirements, when the contractor is operating Government-owned facilities or vehicles to the same extent as the agency would be required to comply if the agency operated the facilities or vehicles (see also FAR Subpart 23.9)

- ii. Documenting Exceptions: Exceptions to specifying and purchasing green products for applicable contract actions must be documented in the contract file. According to Section 1.4 of the GPP, this documentation requirement applies to all purchases above the micro-purchase threshold. Generally, there are three situations when FAS may justify not purchasing green products for applicable contract actions:

- A product or service meeting the sustainability requirements is not available competitively within a reasonable time frame
- A product or service meeting the sustainability requirements does not meet appropriate performance standards
- A product or service meeting the sustainability requirements is only available at an unreasonable price

When an exception justification is required, contract files shall contain documentation that, at a minimum, includes the following:

- A description of the supplies or services required to meet the agency's needs (including estimated dollar value)
- Description of the market research conducted and findings
- Justification as to why the procurement does not require the supply or use of items that satisfy the requirements of GSA's GPP

Refer to Section 4.2 of the FAS Green Purchasing Implementation Plan for roles and responsibilities associated with documenting exceptions.

C. Synopses and eBuy Descriptions

FAR 5.207 now requires that synopses address sustainable acquisition requirements.

GSA's GPP requires that synopses and eBuy descriptions provide a clear and concise description of the applicable requirement for environmentally sustainable products or services as appropriate.

D. Provisions and Clauses

i. Federal Supply Schedules

- [Appendix A](#) identifies the green product-related clauses found in the Federal Acquisition Regulation applicable to each Schedule. The matrix includes three revised or new clauses included in the May 31, 2011, interim FAR rule: an update to clause 52.204-4 *Printed or Copied Double-Sided on Postconsumer Fiber Content Paper*, clause 52.223-5 *Pollution Prevention and Right-To-Know Information* (May 2011), and clause 52.223-10 *Waste Reduction Program* (May 2011).
- Solicitation Refresh: Incorporate the updated clauses during the next regularly scheduled FSS solicitation refresh window, in accordance with [IL 2011-04 Federal Supply Schedule \(FSS\) Solicitation Refresh Management](#). The Solicitation Writing System (SWS) will mark clause 52.204-4 *Printed or Copied Double-sided on Postconsumer Fiber Content Paper* (May 2011) as "Required," and clauses 52.223-5 *Pollution Prevention and Right-To-Know Information* (May 2011), and 52.223-10 *Waste Reduction Program* (May 2011) as "Required as Applicable."

Note: The last two clauses are not appropriate for all Schedules. Insert clause 52.223-5 *Pollution Prevention and Right-to-Know Information* in solicitations that provide for performance in whole or in part on a Federal facility (e.g., facilities maintenance). Insert clause 52.223-10 *Waste Reduction Program* in solicitations that provide for contractor

operation of Government-owned or - leased facilities and/or for support services at Government-owned or - operated facilities (e.g., janitorial services, grounds maintenance, or cafeteria operations).

- In-House Offers: Procuring Contracting Officers (PCOs) are to issue an amendment to incorporate the updated clauses stated in paragraph 7(D)(i) into Schedule offers received prior to the solicitation refresh. Each offeror will have the opportunity to withdraw its offer when deciding whether to accept the amendment.
- Mass Modification: All Schedule contracts will be modified to update the clauses as stated in paragraph 7(D)(i). This will be accomplished through the typical mass modification that is issued via SWS following a solicitation refresh. There is no need for a separate modification.

ii. Other FAS Contracts (i.e., Government-Wide Acquisition Contracts (GWACs), Multi-Agency Contracts (MACs), and Indefinite Delivery/Indefinite Quantity contracts (IDIQs))

- Solicitations: PCOs shall include the following FAR Clauses/Provisions in solicitations issued on or after the effective date of this rule and any resultant contract: 52.204-4 *Printed or Copied Double-Sided on Postconsumer Fiber Content Paper* (May 2011); 52.204-8 *Annual Representations and Certifications* (May 2011); 52.213-4 *Terms and Conditions - Simplified Acquisitions (Other Than Commercial Items)* (Aug 2011); 52.223-5 *Pollution Prevention and Right-to-Know Information* (May 2011); and 52.223-10 *Waste Reduction Program* (May 2011).
- Amendment of Solicitations and Offers: Offers received prior to the inclusion of the clauses in solicitations must be amended to include the following FAR clauses/provisions prior to award: 52.204-4 *Printed or Copied Double-Sided on Postconsumer Fiber Content Paper* (May 2011); 52.204-8 *Annual Representations and Certifications* (May 2011); 52.213-4 *Terms and Conditions - Simplified Acquisitions (Other Than Commercial Items)* (Aug 2011); 52.223-5 *Pollution Prevention and Right-to-Know Information* (May 2011); and 52.223-10 *Waste Reduction Program* (May 2011).

Note: These clauses/provisions are not appropriate for all GWACs, MACs and IDIQs. Insert provision 52.204-8 *Annual Representations and Certifications* in all solicitations and offers except for commercial items solicitations under FAR Part 12. Insert clause 52.213-4 *Terms and Conditions - Simplified Acquisitions (Other Than Commercial Items)* in simplified acquisitions exceeding the micro-purchase threshold that are for other than commercial items. Insert clause 52.223-5 *Pollution Prevention and Right-to-Know Information* in solicitations and offers that provide for performance in whole or in part on a Federal

facility (e.g., facilities maintenance). Insert clause 52.223-10 *Waste Reduction Program* in solicitations and offers that provide contractor operation of Government-owned or - leased facilities and/or for support services at Government-owned or - operated facilities (e.g., janitorial services, grounds maintenance, or cafeteria operations).

- Contract Modification: PCOs shall modify contracts to update the following clauses/provisions as appropriate:
 - o 52.204-4 *Printed or Copied Double-sided on Postconsumer Fiber Content Paper* (May 2011)
 - o 52.204-8 *Annual Representations and Certifications* (May 2011)
 - o 52.213-4 *Terms and Conditions - Simplified Acquisitions (Other Than Commercial Items)* (Aug 2011)
 - o 52.223-5 *Pollution Prevention and Right-to-Know Information* (May 2011)
 - o 52.223-10 *Waste Reduction Program* (May 2011)

iii. Open Market Acquisitions Over the Micro-Purchase Threshold (i.e., procurements in accordance with FAR Parts 12, 13, 14, and/or 15)

- PCOs shall modify contracts to update the clauses as stated in paragraph 7(D)(ii)(Contract Modification) as appropriate.

E. Development of Evaluation Factors

In line with the Government's sustainable acquisition policy (FAR Subpart 23.1) and the requirement for agencies to implement acquisition strategies that implement various environmental objectives (FAR 23.703), the GSA GPP encourages the following practices:

- Unless an exception applies, consider to the maximum extent practicable a preference for environmentally sustainable products or services, when developing best value evaluation factors.
- A contractor's supply and use of environmentally sustainable products or services should be considered as a factor in evaluating the contractor's past performance.

F. Contract Administration and Closeout

Members of the acquisition workforce responsible for monitoring contractor compliance with specifications or other contractual requirements shall monitor compliance with requirements for the delivery or use of environmentally sustainable products or services. These responsibilities include (i) Requesting environmental technical assistance, if needed; and (ii) ensuring that the contractor complies with any reporting requirements relating to environmentally

sustainable products or services.

When applicable, include in the Contractor Performance Assessment Reporting System (CPARS) contractor compliance with specifications or other contractual requirements requiring the delivery or use of environmentally sustainable products or services as a past performance data element (GSA GPP Section 1.3.4).

8. Questions and Answers:

Q1. What training is required for FAS employees?

A1. The FAS Green Purchasing Implementation Plan requires that all FAS employees, regardless of job function, complete the “Green Purchasing” training available at [GSA Online University](#). FAS employees, excluding purchase card holders, were required to complete this course by December 31, 2011. FAS employees that begin after December 31, 2011, will be required to complete the “GSA Purchasing” course within 60 days of on-boarding.

All FAS employees are required to complete a refresher course annually.

Q2. Where can I find the GSA Green Purchasing Plan and FAS Green Purchasing Implementation Plan?

A2. These documents are located in the [Green Purchasing Library](#) on FAS Insite.

Q3. Where can I get more information on E.O. 13514 and E.O. 13423?

A3. Please visit www.FedCenter.gov.

Q4. What else can I do to “green” my contract actions?

A4. There are a number of ways to green your solicitation beyond requiring green products. In fact, it is not sufficient to simply include mandatory FAR clauses and provisions. When considering further ways to green a solicitation, be sure to account for the environmental impact of a product/service through all stages of its life cycle to the extent practicable (from raw materials through disposal). Taking this approach may affect multiple parts of your solicitation, such as packaging specifications, delivery requirements, performance requirements, and evaluation factors. It is important to begin considering these options at the earliest stages of market research.

Please visit the [Tips for Greening Acquisitions](#) page on FAS InSite, which outlines considerations that can be applied to any type of procurement. Further guidance on greening service contracts and evaluation factors is also provided in the GSA GPP, Section A.2 of Appendix A.

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[Appendix A - Green Environmental Clause Matrix](#)
as referenced in 7. D. i. above.

